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WC 10-13

Arent Fox LLP / Washington, DC / New York, NY / Los Angeles, CA

US BANK/FCC DEC 29 2009

Arent Fox

STAMP & RETURN

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202.715.8479 DIRECT  
202.857.6395 FAX  
rummel.jeffrey@arentfox.com

December 28, 2009

Federal Communications Commission  
c/o US Bank – Government Lockbox #979091  
SL-MO-C2-GL  
1005 Convention Plaza, St. Louis, MO 63101  
**ATTN: FCC Government Lockbox**

Re: Joint Application of Sunesys, LLC  
and Velocity.Net Communications, Inc.

For Domestic Section 214 Authorization To Transfer Assets

WC Docket No. \_\_\_\_\_

Dear Ms. Dortch:

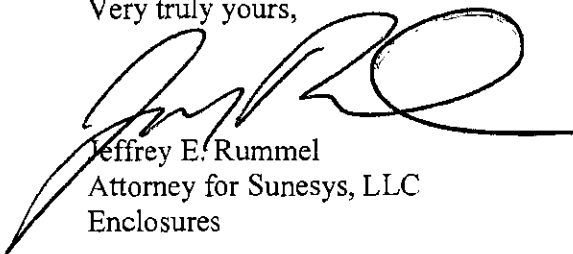
Transmitted herewith are an original and six (6) copies of the above-referenced Joint Application.

Also enclosed is a completed Fee Remittance Form 159 and a check in the amount of \$1,015.00 to cover the filing fee required for this Joint Application.

An additional copy of this filing is also enclosed, to be date-stamped and returned with the courier that is submitting this filing.

Should any questions arise with respect to this matter, please communicate directly with this office.

Very truly yours,

  
Jeffrey E. Rummel  
Attorney for Sunesys, LLC  
Enclosures

US BANK/FCC DEC 29 2009

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE  
FORM 159

Approved by OMB  
3060-0589  
Page No. 1 of 2

(1) LOCKBOX # <div style="font-size: 24px; font-weight: bold; margin-top: 10px;">979091</div>		SPECIAL USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Arent Fox LLP</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$1,015.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>1050 Connecticut Avenue, NW</b>			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY <b>Washington</b>		(7) STATE <b>DC</b>	(8) ZIP CODE <b>20036</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>202-715-8479</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0005012497</b>		SPECIAL USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME <b>Sunesys, LLC</b>			
(14) STREET ADDRESS LINE NO. 1 <b>185 Titus Avenue</b>			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY <b>Warrington</b>		(17) STATE <b>PA</b>	(18) ZIP CODE <b>18976</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>267-927-2029</b>		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) <b>0016325029</b>		SPECIAL USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>CUT</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$1,015.00</b>	(27A) TOTAL FEE <b>\$1,015.00</b>	SPECIAL USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	SPECIAL USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Jeffrey Rummel</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE		DATE <u>12/28/2009</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described			
SIGNATURE _____		DATE _____	

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE (CONTINUATION SHEET)  
FORM 159-C

Page No 2 of 2

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT  
SECTION BB- ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME <b>Velocity.Net Communications, Inc.</b>		
(14) STREET ADDRESS LINE NO 1 <b>201 West 11th Street</b>		
(15) STREET ADDRESS LINE NO 2		
(16) CITY <b>Erie</b>	(17) STATE <b>PA</b>	(18) ZIP CODE <b>16505</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>(814) 833-9111</b>		(20) COUNTRY CODE (if not in U S A )
FCC REGISTRATION NUMBER (FRN) REQUIRED		
(21) APPLICANT (FRN) <b>0015881154</b>		(22) FCC USE ONLY
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	
(23C) CALL SIGN/OTHER ID	(24C) PAYMENT TYPE CODE	(25C) QUANTITY
(26C) FEE DUE FOR (PTC)	(27C) TOTAL FEE	FCC USE ONLY
(28C) FCC CODE 1	(29C) FCC CODE 2	
(23D) CALL SIGN/OTHER ID	(24D) PAYMENT TYPE CODE	(25D) QUANTITY
(26D) FEE DUE FOR (PTC)	(27D) TOTAL FEE	FCC USE ONLY
(28D) FCC CODE 1	(29D) FCC CODE 2	
(23E) CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY
(26E) FEE DUE FOR (PTC)	(27E) TOTAL FEE	FCC USE ONLY
(28E) FCC CODE 1	(29E) FCC CODE 2	
(23F) CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY
(26F) FEE DUE FOR (PTC)	(27F) TOTAL FEE	FCC USE ONLY
(28F) FCC CODE 1	(29F) FCC CODE 2	

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of the Joint Application of	)	
	)	
<b>Sunesys, LLC</b>	)	
Transferor	)	
	)	
and	)	WC Docket No. _____
	)	
<b>Velocity.Net Communications, Inc.</b>	)	
Transferee	)	
	)	
For Domestic Section 214 Authorization	)	
To Transfer Assets	)	
_____	)	

**JOINT APPLICATION**  
**(STREAMLINED PROCESSING REQUESTED)**

By this Joint Application, and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, Section 63.04 of the Federal Communications Commission (“Commission”) Rules, 47 C.F.R. § 63.04 and the Commission’s Report and Order issued in CC Docket No. 01-150,<sup>1</sup> Sunesys, LLC (“Sunesys”) and Velocity.Net Communications, Inc. (“Velocity”) hereby request authorization for Sunesys to transfer to Velocity the assets of Sunesys associated with Sunesys’ network in Erie County, Pennsylvania (the “Erie Assets”), including Sunesys’ customer accounts and contracts associated with such Erie Assets.<sup>2</sup> As explained herein, the Parties respectfully request that this Application be granted expeditiously in order to permit them to timely complete this transaction. In support of this Application, the Parties state as follows.

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<sup>1</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, CC Docket No. 01-150, 17 FCC Rcd 5517 (2002) (“Streamlining Order”).

<sup>2</sup> Velocity and Sunesys will be referred to collectively herein as the “Parties”.

**I. INFORMATION REQUIRED BY SECTION 63.04**

Applicants submit the following information in response to the requirements in Sections 63.03 and 63.04(a) of the Commission's Rules, 47 C.F.R. §§63.03 and 63.04(a):

**Section 63.04(a)(1) – Name, address and telephone number of each applicant**

Transferor:

Sunesys, LLC  
185 Titus Avenue  
Warrington, Pennsylvania 18976  
Tel: (267) 927-2029  
FRN: 0016325029

Transferee

Velocity.Net Communications, Inc.  
201 West 11<sup>th</sup> Street  
Erie, PA 16505  
Tel: (814) 833-9111  
FRN: 0015881154

**Section 63.04(a)(2) - The government, state, or territory under the laws of which each corporate or partnership applicant is organized**

Transferor:

Sunesys, LLC is a single-member Delaware Limited Liability Company.

Transferee:

Velocity.Net Communications, Inc. is a privately-owned Pennsylvania Corporation.

**Section 63.04(a)(3) - The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed**

**Transferor:**

Jeffrey E. Rummel, Esquire  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
Phone: (202) 715-8479  
Fax: (202) 857-6395  
rummelj@arentfox.com

**Transferee:**

Robert G. Dwyer, Esquire  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West 10th Street  
Erie, PA 16501  
Telephone: (814) 459-2800  
Fax: (814) 454-3757  
E-mail: RDWYER@kmgslaw.com

**Section 63.04(a)(4) - The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent)**

**Transferor:**

Sunesys, LLC is a single-member Delaware Limited Liability Company whose sole member is its immediate parent InfraSource Incorporated.

InfraSource Incorporated is a Delaware corporation with its principal place of business located at 1360 Post Oak Blvd., Suite 2100, Houston, TX 77056. InfraSource is one of the largest specialty contractors serving utility transmission and distribution infrastructure in the United States.

InfraSource Services, Inc. ("IFS") owns 100% of the equity of InfraSource Incorporated. IFS is a Delaware Corporation with its principal place of business located at 1360 Post Oak Blvd., Suite 2100, Houston, TX 77056.

Quanta Services, Inc. owns 100% of the equity of IFS. Quanta Services, Inc. is a Delaware Corporation with its principal place of business located 1360 Post Oak Blvd., Suite 2100, Houston, TX 77056. Three persons (all US citizens) hold ten percent (10%) or more of Quanta Services, Inc.'s limited vote common stock:

Vincent D. Foster – 25.59%  
1300 Post Oak Blvd., Suite 800  
Houston, Texas 77056

William G. Parkhouse – 22.11%  
203 Canyon Rim Drive  
Austin, Texas 78746

James C. Thomas – 10.68%  
4040 San Felipe, Suite 155  
Houston, Texas 77027

Transferee:

Velocity is a privately held company, 100% of the stock is held by Joel Deuterman. Mr. Deuterman, who is a U.S. citizen, resides at 260 Niagara Pointe, Erie, PA 16507. Mr. Deuterman's principal business is the ownership and management of Velocity.

**Section 63.04(a)(5) - Certification pursuant to §§1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 USC §853**

Applicants certify that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

**Section 63.04(a)(6) - A description of the transaction**

The Parties have entered into a transaction pursuant to which the following will occur, in relevant part, upon approval of this Application, the satisfaction of all relevant conditions, and the completion of the transaction:

- Velocity will acquire all of Sunesys' Erie Assets used in the provision of, or to support the provision of, the CAP-related services in Erie County, Pennsylvania for which Sunesys is authorized, including but not limited to underground and aerial fiber optic networks, machinery and equipment.
- Velocity will acquire all rights under Sunesys' customer accounts and contracts associated with the Erie Assets.
- Sunesys will assign to Velocity all of Sunesys' rights of way easements, fiber leases, network licenses and other agreements related to Sunesys' provision of service to its customers with the Erie Assets.

- Sunesys will remain in existence after completion of the transaction and will continue to offer service in Pennsylvania with its remaining assets, and in the other States in which it is currently providing service.
- Upon completion of the transaction, Velocity will become the service provider for Sunesys' customers being served by the Erie Assets (the "Erie Customers"), and will provide service to the Erie Customers under Velocity's existing authorization in Pennsylvania as a Competitive Access Provider. As set forth below, the proposed transfer of assets and customer accounts will be seamless and virtually transparent to the Erie Customers in that the transfer will involve no disruption, impairment, or other change in the facilities used to provide service to such customers, or the rates, terms and conditions of such service.

**Section 63.04(a)(7) - A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area**

**Transferor:**

Sunesys is currently authorized to provide state-wide competitive telecommunications services and private line services in the States of California, Delaware, the District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio and Pennsylvania.<sup>3</sup> Sunesys currently provides service to commercial, governmental and non-profit customers in California, Delaware, Florida, Georgia, Illinois, Maryland, New Jersey, Pennsylvania and Ohio consisting of the leasing of dedicated fiber optic facilities constructed and owned by Sunesys to large commercial users and governmental entities, and the provision of managed metropolitan Ethernet network services, over fiber optic facilities constructed and owned by the Company, to school and library systems. An affiliate of Sunesys, Sunesys of Virginia, Inc. ("Sunesys VA"), is authorized to provide competitive telecommunications services in the Commonwealth of Virginia. Other than Sunesys VA, no other affiliate of Sunesys offers

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<sup>3</sup> Sunesys' wholly-owned subsidiary, Sunesys of Virginia, Inc. is authorized to provide telecommunications services in Virginia.



domestic telecommunications services. Upon receipt of regulatory approvals and completion of this transaction, Sunesys will no longer be providing service in Erie County, PA and surrounding areas (subject to applicable non-compete provisions), but Sunesys will continue to provide service to its remaining customer base throughout other areas of Pennsylvania.

Transferee:

Pursuant to an Order entered August 24, 2006, Velocity is certified in the Commonwealth of Pennsylvania to operate as a Competitive Access Provider on a state-wide basis. See Docket No. A-311409. Velocity currently provides telecommunications services and private line services to commercial, governmental and non-profit customers in Erie, Crawford and Warren Counties in Pennsylvania. Velocity is also authorized to operate in the State of North Carolina, however does not have any customers at this time. Velocity does not provide service to residential customers, nor does it provide telecommunications in any other State.<sup>4</sup> No affiliate of Velocity offers domestic telecommunications services.

**Section 63.04(a)(8) - A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment**

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03 because, immediately following the transaction, (1) Applicants and their affiliates, as defined in Section 3(1) of the Communications Act ("Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their affiliates will provide competitive telephone exchange services or exchange services (if at all) exclusively in geographic areas

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<sup>4</sup> Velocity is a privately owned company; the principal place of business is 201 West 11<sup>th</sup> Street, Erie, PA 16505. No other companies related to Velocity are certified by the PA PUC.

served by a dominant local exchange carrier that is not a party to the transaction; and; (3) none of the Applicants is dominant with respect to any service.

Further, streamlined treatment is appropriate under the Commission's "case-by-case approach."<sup>5</sup>

Indeed, the Commission has adopted a "general rule in which all applications are eligible for streamlined processing," finding that such general eligibility for streamlined processing "best reduces regulatory burdens on domestic telecommunications carriers, while at the same time ensuring that we continue to serve the public interest under section 214 of the Communications Act."<sup>6</sup> This Application should be subject to streamlined processing because it involves only a transfer of assets, and presents no "novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines."<sup>7</sup> As demonstrated herein, this Application presents no competitive or public interest concerns. Upon completion of the proposed transaction, no disruption, impairment, or other change in the facilities used to provide service to the Erie Customers will occur, nor will any change occur to the rates, terms and conditions of such service. Because this transaction poses no competitive concerns and raises no novel issues, this Application is appropriate for streamlined treatment.

Finally, it is noted that the Commission has concluded that "transfers of incumbent LEC local exchange assets are unlikely to raise the potential of competitive harm and therefore are eligible for presumptive streamlined treatment."<sup>8</sup> Given that Applicants are nondominant carriers, the

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<sup>5</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 ¶34 (2002) ("*Streamlining Order*"), see also 47 C.F.T.L. § 63.08(a) (permitting streamlining "[u]pon determination ... that the application is appropriate for streamlined treatment").

<sup>6</sup> *Streamlining Order* ¶34.

<sup>7</sup> *Id.* ¶28.

<sup>8</sup> *Streamlining Order*, 17 FCC Rcd at 5532-33

proposed transfer of assets from Sunesys to Velocity is even less likely to raise the potential of competitive harm than a comparable transfer of local exchange assets between ILECs.

**Section 63.04(a)(9) - Identification of all other Commission applications related to the same transaction**

No other FCC applications relate to the transaction that is the subject of this Application.

**Section 63.04(a)(10) - A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure**

The Parties do not request special consideration because no party to the transaction is facing imminent business failure.

**Section 63.04(a)(11) - Identification of any separately filed waiver requests being sought in conjunction with the transaction**

The Applicants do not seek any waivers in conjunction with this transaction.

**Section 63.04(a)(11) - A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets**

The Parties respectfully submit that the proposed transaction is in the public interest and should be approved by the Commission for the following reasons:

- Velocity will acquire all rights under Sunesys' customer accounts and contracts with respect to the Erie Customers. Sunesys' existing Erie Customers are being served pursuant to contracts entered into on an Individual Case Basis (ICB), and are therefore not subject to tariffed rates in Pennsylvania. Upon completion of the transaction, Velocity will assume responsibility for such contractual obligations, as is. The same services will be offered by Velocity to such customers under the same contracts, and at the same rates, terms and conditions specified in such ICB contracts. Therefore, the transaction will be seamless and virtually transparent to Sunesys' Erie Customers, and there will be no disruption, impairment, or other change in the facilities used to provide service to the Erie Customers, or the rates, terms and conditions of such service.
- Provision of service to the Erie Customers will be conducted under the supervision of the qualified technical and operational senior management team currently in place for Velocity, with which the Commission is well familiar based on prior filings that identified the experience of such personnel.

- The transfer to Velocity of the Erie Assets, including Sunesys' customer accounts and contracts associated with such assets and the Erie Customers, will serve the public interest by enabling Velocity to more fully serve the Erie market in a cost-effective manner, thereby enhancing its competitive position and ability to provide a diverse range of services to customers in Western Pennsylvania. By permitting Velocity to strengthen its competitive position and accelerate the offering of innovative products and services at reasonable rates, the proposed transaction will ultimately improve competitive choices for purchasers of services in Pennsylvania. To deny this transaction would, as a general matter, discourage competitive providers from expanding their offerings within Pennsylvania and would, instead, encourage such providers to seek a more favorable regulatory environment elsewhere, neither of which would enhance the public interest. In short, the proposed transaction will directly benefit customers in Pennsylvania and elsewhere by enhancing the future provision of innovative, high quality telecommunications services to the public and thereby promoting competition in the telecommunications market.

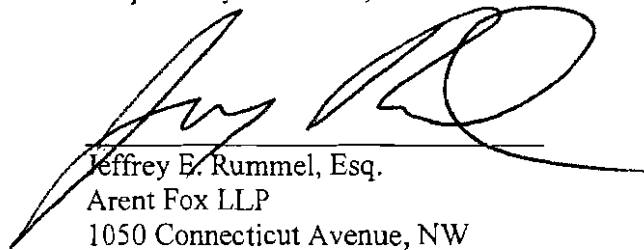
## **II. REQUEST FOR EXPEDITED PROCESSING**

The Parties request expedited approval of the instant Application to permit a timely completion and coordination of all aspects of this transaction. Expedited approval will minimize the uncertainty as to the continuing viability of the services currently being provided in the minds of customers which might otherwise result from lengthy delays in the review and approval process.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Parties jointly request that the Commission grant this Joint Application and issue an Order approving the transfer to Velocity of Sunesys' Erie Assets, including Sunesys' customer accounts and contracts associated with such Erie Assets.

Respectfully submitted,



Jeffrey E. Rummel, Esq.  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036  
Phone: (202) 715-8479  
Fax: (202) 857-6395  
E-Mail: [Rummel.Jeffrey@arentfox.com](mailto:Rummel.Jeffrey@arentfox.com)

Attorneys for Sunesys, LLC



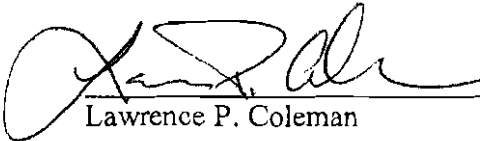
Robert G. Dwyer, Esq.  
Knox McLaughlin Gornall & Sennett, P.C.  
120 West 10th Street  
Erie, PA 16501  
Telephone: (814) 459-2800  
Fax: (814) 454-3757  
E-mail: [RDWYER@kmgslaw.com](mailto:RDWYER@kmgslaw.com)

Attorneys for Velocity.Net Communications, Inc.

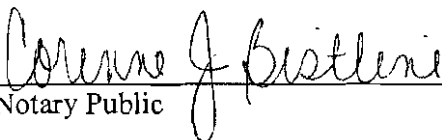
Dated: 12/24/09

**VERIFICATION**

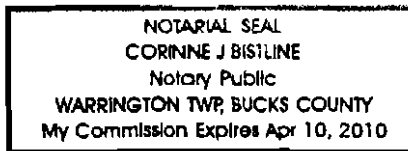
I, Lawrence P. Coleman, hereby state that I am the President of Sunesys, LLC, and I am authorized to make this verification on its behalf; that I have read the foregoing Joint Application and know the contents thereof; and that the same are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

  
Lawrence P. Coleman

Subscribed and sworn to before me this 15<sup>th</sup> day of December, 2009.

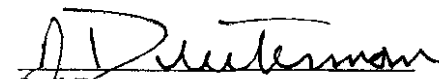
  
Notary Public

My Commission expires: April 10, 2010

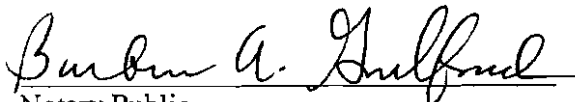


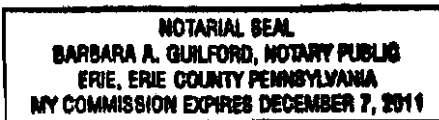
VERIFICATION

I, Joel Deuterman, hereby state that I am the President of Velocity.Net Communications, Inc., and I am authorized to make this verification on its behalf; that I have read the foregoing Joint Application and know the contents thereof; and that the same are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

  
Joel Deuterman

Subscribed and sworn to before me this 21<sup>st</sup> day of December, 2009.

  
Notary Public



My Commission expires: Dec. 7, 2011